

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>MARTIN VALERA-GRANADOS</b>	)	
Claimant	)	
V.	)	
	)	
<b>EDER "EDDIE" M. PARRA</b>	)	
<b>LUIS E. GRANADOS</b>	)	
<b>AMBER ROOFING</b>	)	
Respondents	)	
AND	)	Docket No. 1,068,468
	)	
<b>MISSOURI EMPLOYERS MUTUAL</b>	)	
<b>CHARTIS CASUALTY COMPANY/AIG</b>	)	
Insurance Carriers	)	
AND	)	
	)	
<b>KANSAS WORKERS</b>	)	
<b>COMPENSATION FUND</b>	)	

**ORDER**

Respondent, Amber Roofing, and its insurance carrier, Chartis Casualty Company/AIG, request review of Administrative Law Judge Kenneth Hursh's March 13, 2014 preliminary hearing Order. C. Albert Herdoiza of Kansas City, Kansas, appeared for claimant. Brent Johnston of Kansas City, Kansas, appeared for respondent, Eder "Eddie" M. Parra. Andrew Dickson of Kansas City, Missouri, appeared for insurance carrier, Missouri Employers Mutual Insurance Co. There were no appearances at the preliminary hearing for Luis E. Granados or Amber Roofing and Chartis Casualty Company/AIG.

Subsequent to the March 13, 2014 preliminary hearing Order, Christopher McCurdy of Overland Park, Kansas, entered his appearance for Amber Roofing and Chartis Casualty Company/AIG, and Ronald P. Wood entered his appearance for the Kansas Workers Compensation Fund which was implied by claimant's attorney.

The record on appeal is the same as that considered by the judge and consists of the March 10, 2014 preliminary hearing transcript and exhibits thereto, the March 7, 2014 deposition transcript of Martin Valera-Granados and exhibits thereto, and the March 7, 2014 deposition transcript of Luis E. Granados-Granados, in addition to all pleadings contained in the administrative file.

### ISSUES

This case concerns claimant's December 16, 2013 accidental injury. Regarding the relationship of the parties, the judge found: (1) Amber Roofing was the general or principal contractor; (2) Eder Parra was Amber Roofing's subcontractor, but Parra did not have valid insurance coverage for this claim; (3) Luis Granados, who was claimant's cousin, was Parra's subcontractor, but Luis Granados was not insured; and (4) claimant was Luis Granados' employee, but not Parra's direct employee.

The judge concluded:

According to K.S.A. 44-503, however, a contractor, or "principal," is liable for workers compensation benefits for an injured employee of an uninsured subcontractor. The principal then has the right to seek recovery of the benefits paid from the uninsured subcontractor. The record in this case failed to prove either subcontractor, Parra or Luis Granados, or the principal contractor, Amber Roofing, had workers compensation insurance for this injury. Thus, there is no insured contractor on which to fix liability for benefits under K.S.A. 44-503. The court sees no alternative, here, but to hold each contractor individually liable for the claimant's benefits.<sup>1</sup>

The judge ordered the three respondents to pay \$418.74 in medical expenses and \$1,728.10 in temporary total disability (TTD) benefits.

Amber Roofing requests review of: (1) whether claimant's accidental injury arose out of and in the course of employment; (2) whether claimant gave timely notice; and (3) whether an employer/employee relationship existed. Amber Roofing did not file a brief.

Subsequent to Amber Roofing's appeal, a second preliminary hearing was held on April 16, 2014. The judge issued a preliminary hearing Order on April 21, 2014. The judge noted, "This was basically a continuation of a March 10, 2014 preliminary hearing where the court was unable to determine [if] the principal or [if] either subcontractor was insured, and therefore ordered benefits paid jointly by the various respondents."<sup>2</sup> The judge then affixed liability against Amber Roofing and Chartis/AIG for medical treatment and TTD, to the extent benefits previously ordered paid had not yet been paid, and ordered Amber Roofing and Chartis/AIG responsible for a late-April examination with Dr. Heddings and any treatment Dr. Heddings recommended. Finally, the judge ordered Amber Roofing and Chartis/AIG to pay for the costs associated with the April 16, 2014 preliminary hearing, along with court reporter and interpreter costs of the March 10, 2014 preliminary hearing, if not already paid.

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<sup>1</sup> ALJ Order (March 13, 2014) at 3.

<sup>2</sup> ALJ Order (April 21, 2014) at 1.

Claimant argues the April 21, 2014 preliminary hearing Order was not appealed and respondent's appeal should be dismissed.

Therefore, the issues for Board review are:

1. Did claimant's accidental injury arise out of and in the course of employment?
2. Did claimant give timely notice?
3. Did an employer/employee relationship exist?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The undersigned Board Member adopts and incorporates the judge's factual findings from the March 13, 2014 preliminary hearing Order, with the exception of noting the evidence in the case now shows that Amber Roofing had workers compensation coverage in Kansas.

To the extent necessary to address Amber Roofing's appeal, this Board Member affirms the March 13, 2014 preliminary hearing Order. Claimant's accidental injury arose out of and in the course of his employment. Notice was timely. Under K.S.A. 44-503, claimant was a statutory employee of Amber Roofing. Claimant met his burden of proof on these issues.

Of note, the judge's March 13, 2014 preliminary hearing Order was superceded by the judge's April 21, 2014 preliminary hearing Order. The second preliminary hearing Order was not appealed. This Order does not alter or affect the April 21, 2014 preliminary hearing Order.

#### **CONCLUSION**

**WHEREFORE**, the undersigned Board Member affirms the March 13, 2014 preliminary hearing Order.<sup>3</sup>

**IT IS SO ORDERED.**

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<sup>3</sup> By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim. Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(I)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

Dated this \_\_\_\_\_ day of May 2014.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

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Honorable Kenneth J. Hursh